Proposed Rulemaking -- Clean Water Act
Section 401 Water Quality Certification Program

State Water Resources Control Board

Responses to Public Comments -- II

Subsequent ("15-day") Comment Period:

December 24, 1999 to January 14, 2000

Abbreviations/Acronyms/Symbols:

(II) -	Referring to the second/final draft proposed certification regulations (used to differentiate un-designated comments received as of June 8, 1999 from those designated with a "(II)," received as of January 14, 2000)
§ -	section/part in a statute/regulation
CEQA -	California Environmental Quality Act
FERC -	Federal Energy Regulatory Commission
Regional Board -	Regional Water Quality Control Board
Staff -	State Board Staff
State Board -	State Water Resources Control Board
USC -	United States Code

RESPONSES TO COMMENTS

COMMENTER E (II).

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Written Comments:	January 13, 2000 Letter (3 pages) January 13, 2000 FAX (from Bryan Schweikert) 5 pages

Comment E-17 (II): **Subsection 3831(v), the definition of "water quality standards...," is vague and ambiguous. The State's authority should be limited to that in the Clean Water Act and Porter-Cologne Water Quality Control Act.**

Response: See responses to Comments C-1 and D-7.

Comment E-18 (II): **It is unclear how the (hydroelectric-project) certification fee process will proceed. For example, in subsection 3833(b)(1) the "trigger" for a second deposit should be changed from $750 to $1,000.**

Response: Staff believes that the fee language is clear and unambiguous and the process outlined fair. (See, also, response to comment E-3.) The revised regulations require an applicant to provide an initial deposit of $1,000 and to provide a second deposit when the State Board's reasonable costs exceed $750 (75% of the original deposit). An applicant would then have up to 60 days, after receiving notice, to provide an additional deposit while the State Board continued processing the application. This proposed process will help cover only some of the State Board's costs of processing the application during the period between deposits. However, were a second deposit required only when reasonable costs reached $1,000, the agency would have no project-specific funding whatsoever while it waited for a second deposit. Other than what is proposed, the alternatives include ceasing work entirely or continued processing of an application unfunded for up to 60 days. Staff has chosen the best compromise for both the applicant and the agency.

Comment E-19 (II): **It is unclear what amount of additional deposits the State Board will require under section 3383(b)(1)(B), which requires additional deposits when the State Board's reasonable costs exceed the total amount previously deposited less $2,000. The commenter also wants to know the basis for the $2,000 figure.**

Response: See responses to Comments E-3, in part, and E-18 (II). Staff chose $2,000, as it did the $250 value ($1,000 minus $750) in the case of the initial deposit, because it will allow the agency to continue working on the application while the applicant has 60 days to provide a subsequent deposit.

Comment E-20 (II): **The provision regarding additional costs is stated twice, is unduly complicated, and makes it difficult for an applicant to estimate the amount of additional costs to be expected.**

Response: See responses to comments E-3 and E-19 (II). Staff considers any repetition in this section to be necessary for purposes of clarity.

Comment E-21 (II): **Certification applications for maintenance projects at FERC-licensed facilities should continue to be filed with the Regional Boards. The Commenter suggests changing the notice provision of section 3855(a)(2) so that notice is only sent to the State Board when the proposed activity may involve a facility obtaining or amending a FERC license.**

Response: See response to Comment E-13. If, under the regulations as now proposed, maintenance at a facility triggers the need for certification but does not specifically require a FERC license or license amendment, applications will continue to be filed at the Regional Boards (as the Commenter prefers). When such an application is filed at a Regional Board, notice must be sent to the State Board so that it can ensure that FERC cannot interpret a Regional Board certification for maintenance work (for example) at a licensed facility as fulfilling any need for subsequent certification if and when the facility is licensed or modified later. When a FERC license or license amendment is required in conjunction with a proposed activity, or is triggering the need for certification in and of itself, applications must be submitted directly to the State Board.

Comment E-22 (II): **Minor, temporary diversions of water, discussed in subsection 3855(b)(1)(B)(iii), should not trigger the need for a certification application to the State Board.**

Response: Application submittal to the State Board should not depend on whether diversions are characterized as "minor" or "temporary," but on whether they are the kinds of diversions for which a water right is required. In fact, in the example given by the commenter, where water is diverted away from a construction site, no water right is required, and the application would be submitted to a Regional Board. Water rights are only required where water is diverted for beneficial use, such as irrigation or hydropower generation, not where water is merely diverted to avoid harm, as in diversions for flood control or to keep water out of construction sites.

Comment E-23 (II): **The language in subsection 3856(f) is contradictory, or at least confusing, with regard to whether CEQA documentation is required for a certification application.**

Response: The State's Permit Streamlining Act prohibits agencies from requiring CEQA documentation as part of a complete application (Government Code §65941(b)). Yet it also allows agencies to require information in a complete application necessary to make CEQA findings prior to taking an approval action (*Ibid*). Furthermore, CEQA itself requires agencies issuing discretionary approval of projects that may impact the environment to have reviewed final environmental documentation (e.g., Public Resources Code §21080(a), CEQA Guidelines §15004(a)). Taken together, these requirements can be confusing to applicants. Staff believes that the proposed language, which is built on existing regulation text, is as clear and concise as possible, given the circumstances.

COMMENTER F (II).

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Written Comments: January 14, 2000 Letter
13 pages

Comment F-23 (II): **The Commenter approves of certain revisions to section 3833 that would better tie proposed certification fees for hydropower-related activities to actual staff work necessary to process an application, and give applicants greater certainty about certification costs.**

Response: Comment noted.

Comment F-24 (II): **There is no cap or upper limit on costs.**

Response: See response to Comment F-1.

Comment F-25 (II): **While the revisions appear to attempt to distinguish activities requiring major and minor FERC license amendments, the revisions are confusing and open-ended, and may be difficult to administer.**

Response: See response to Comment E-2.

Comment F-26 (II): **The (hydroelectric project) fee structure is confusing. In particular:**

1. **It is unclear whether the State Board meant $750 or $1,000 as the trigger for the first additional deposit.**

2. **It appears that the State Board may require the applicant to deposit an additional $5,000 even if the estimated costs of processing the application are less. The amount of the additional deposit should be limited to the amount of the deposit if it is less than $5,000.**

Response:

1. See response to Comment E-18 (II).

2. The subparagraph, as written, requires an applicant to pay either an additional $5,000 (plus any unpaid costs) or a lesser amount determined by certification staff to be necessary to complete processing the application. If certification staff has determined that a lesser deposit

would suffice, it would not require the applicant to pay a greater amount.

Comment F-27 (II): **There is still no definition of "reasonable costs."**

Response: See response to Comment F-2. Section 3833(b)(1)(D) generally describes the State Board's reasonable costs, but it appears that the Commenter wants "reasonable costs" to be more specifically defined. That is unnecessary and it would be unwise to attempt to further define what is "reasonable," since what is reasonable will vary depending on the particular facts and circumstances of each application.

Comment F-28 (II): **The list of reasonable costs identified in subsection 3833(b)(1)(D) should be modified to emphasize that the State Board is eligible to be compensated for "participation in" any investigations or studies in order to clarify that the studies are the responsibility of the applicant.**

Response: The Commenter is correct that pre-filing studies will normally be carried out by and the responsibility of an applicant. However, the State Board may participate in various ways, for example in planning study design and by reviewing resulting data. For some projects, State Board involvement in pre-filing activities may be both lengthy and resource-intensive. The State Board intends, through these regulations, to be fairly compensated for pre-filing work if and when an applicant eventually files for water quality certification.

That said, the phrase "participation in" already applies to both "pre-filing consultation" and "any investigations or studies," as the Commenter desires. The suggested change is therefore unnecessary.

Comment F-29 (II): **The commenter seeks reassurance that the State Board will not seek reimbursement for pre-filing consultation costs if no application is subsequently filed.**

Response: Subsection 3833(b)(1)(D) provides that the State Board may seek reimbursement of pre-filing consultation costs only if, and only after, the applicant submits an application to the State Board.

Comment F-30 (II): **The Commenter requests clarification and delineation of cost categories, and feels that an applicant should not have to pay for certain costs such as travel, etcetera. She requests clarification that the applicant will not be required to reimburse the State Board for its direct participation in a concomitant FERC relicensing proceeding.**

Response: See response to Comment F-2.

Comment F-31 (II): **The revised regulations do not require the State Board to be accountable for its fees.**

Response: See response to Comment E-1.

Comment F-32 (II): **The use of the word "appropriate" in subsection 3836(a) creates ambiguity.**

Response: See responses to Comments C-1 and D-7. Please note that the word "appropriate" is taken directly from Clean Water Act section 401 language (33 USC §1341(d)).

Comment F-33 (II): **Denial of certification without prejudice based on procedural inadequacies or the need for additional information is a circumvention of federal law specifying that certification is waived if a state fails to act within one year, especially in the context of FERC licensing.**

Response: Staff disagrees. (See also responses to Comments B-3, C-2, M-2, M-10, and N-3.)

Denial without prejudice is a well-accepted practice to prevent waiver of certification in cases where procedural deficiencies or a lack of necessary information (e.g., CEQA) prevent the state from issuing certification within the certification period. By its terms, section 401 of the Clean Water Act provides that certification shall be deemed waived if the state "fails or refuses to act" within the certification period allowed. The law does not require the state to grant or waive certification, only to "act" (33 USC §1341(a)(1)). If the state denies certification without prejudice, it has acted within one year, consistent with the express language of section 401 and its legislative history.

In fact, FERC has expressly recognized that denial is the

appropriate action where a state faces procedural deficiencies. (*Wyoming Valley Hydro Partners* (1992) 58 FERC P. 61,219 ["[T]he states [are] responsible for determining whether an applicant has complied with their procedural requirements. If an applicant fails to do so, the state agency has the power to deny the request for certification. The denial can be without prejudice to the applicant's refiling of an application that conforms to the state's requirements." (Footnote omitted.)]. Accord *Central Vermont Public Service Corporation* (1992) 60 FERC P. 61,009 ["If a state certifying agency believes that an applicant has not complied with the state's filing requirements or has failed to provide necessary additional information, the agency must deny the certification request within one year of receiving it in order to avoid a waiver."]; *City of Watertown, New York* (1995) 71 FERC P. 62,193 [denial of without prejudice because Instream Flow Incremental Methodology (IFIM) study had not been completed]; *Rugraw, Inc.* (1999) 89 FERC P. 61,287.)

Comment F-34 (II): **Support is voiced for requested changes to language in subsections 3833(b)(4) and 3837(b)(1).**

Response: Comment noted.

Comment F-35 (II): **Subsection 3856(d)(3) could still result in the State receiving a large quantity of material unrelated to water quality.**

Response: See responses to Comments F-8, N-6, and O-5.

Comment F-36 (II): **Language in subsection 3856(h)(8) is still vague and over-reaching, and could force applicants to reveal strategic proprietary information.**

Response: See responses to Comments F-9, L-4, R-3, and S-19.

Comment F-37 (II): **Support for public hearing option.**

Response: Comment noted.

Comment F-38 (II): **The word "applicable" should be used in place of "appropriate" in subsection 3859(a).**

Response: See responses to Comments C-1 and D-7. Concerning the use of the word "appropriate," please see Comment F-32.

Comment F-39 (II): **The term "aggrieved person" still should be (more narrowly) defined.**

Response: See responses to Comments C-6 and C-7. (See also response to Comment L-2.)

Comment F-40 (II): **How can a person who did not originally participate in the certification process still be allowed to file a petition?**

Response: See responses to Comments C-6 and C-7.

Comment F-41 (II): **While improved, subsection 3867(b) (reconsideration on own motion) is still unnecessary.**

Response: The proposal that a certifying agency be able to issue (general) certification on its own motion (§3861) requires that the State Board be able to reconsider such an action on its own motion, since there would be no applicant and limited public notice if the certification is (claimed to be) exempt from CEQA.

Comment F-42 (II): **Limitations are still necessary in section 3868.**

Response: See response to Comment N-11.

Comment F-43 (II): **Language added in subsection 3869(d) (petition for stay) is confusing and unnecessary.**

Response: As the Commenter points out, the proposed language is based on other existing agency regulations, which have worked well for petitioners and the agency.

COMMENTER K (II).

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Written Comments: January 13, 2000 Letter
15 pages (including 8-page copy of June 7, 1999 comment letter)
January 13, 2000 Overnight Express Letter
22 pages (including duplicate pages, and 8-page copy of June 7, 1999 comment letter)
January 13, 2000 FAX
16 pages (including 8-page copy of June 7, 1999 comment letter)

Comment K-15 (II): **The rulemaking notice and proposed regulations do not substantiate the need for increased fees for 401 certification.**

Response: See responses to comments K-1 and K-2.

Comment K-16 (II): **The fee scheduled outlined in section 3833 should be stated more clearly and the State Board should explain the reasons for the increased costs. For example, subsections 3833(b)(1)(A)-(B) refer to both $750 and $1,000 figures and the State's reasonable fees are not clearly defined.**

Response: The reasons for the increased costs are explained in the initial Statement of Reasons and the final Statement of Reasons. Concerning the $750 and $1,000 figures, see responses to comments E-18 (II) and F-2.

Comment K-17 (II): **What "investigations" or "studies" referred to in subsection 3833(b)(1)(D) are anticipated?**

Response: An applicant may chose to use alternative collaborative application procedures that integrate pre-filing consultation and environmental review processes. It is the participants in this collaborative approach--the applicant, the agencies, and the interested parties--who will define the scope of environmental review and identify the investigations or studies referred to in subsection 3833(b)(1)(D).

Comment K-18 (II): **Language in subsection 3833(b)(1)(D) and 3833(d) appears contradictory (regarding fees for special studies).**

Response: Agreed. Subsection 3833(d) has been revised accordingly.

Comment K-19 (II): **Define "special technical or economic report" and describe what would trigger the requirement for them.**

Response: The language in question has been removed.

Comment K-20 (II): **Applicants should be provided with a breakdown of expenditures or a fee schedule/table.**

Response: See response to Comment E-1.

Comment K-21 (II): **The proposed fees (§3833(b)(1)) may accidentally overlook re-licensing of hydroelectric facilities when no construction is involved.**

Response: Subsection 3833(b)(1) covers the following activities that are subject to certification:

1. Activities that include the production of hydroelectric power and require the issuance or amendment of a FERC license; and

2. Activities that involve construction or modification of a hydroelectric facilities, and the activity or facilities require the issuance or amendment of a FERC license.

Thus, subsection 3833(b)(1) applies to hydroelectric activities even where no construction is involved. It may be that the Commenter believes that this section does not cover relicensing. It is unnecessary, however, to refer to relicensing because relicensing is actually part of the licensing process--an applicant must apply for a license regardless of whether he already has one or not.

Comment K-22 (II): **Subsection 3835(a) should be returned to the original language requiring prompt action on determining completeness of an application.**

Response: Staff must disagree. The language in question was proposed in order to comply with the State Permit Streamlining Act (e.g., Government Code §65943).

Comment K-23 (II): Subsections 3835(b), 3836(b), 3836(c), and 3856(f) should be revised to clarify or define the otherwise vague term "properly review."

Response: It seems common sense that, in general, agencies will need adequate opportunity and time for proper review of, sometime voluminous, environmental documents. This is of course necessary so that Lead and Responsible Agencies can develop appropriate findings pursuant to CEQA (CEQA Guidelines §§15065 and 15091). Exactly how much time is necessary will vary with the project size/scope and CEQA documentation developed. (Regarding timeliness, see CEQA Guidelines §15004.)

Comment K-24 (II): When a certification action is somehow prevented (e.g., absent proper CEQA documentation), the proposed denial without prejudice in the face of expiration of the federal time limit is an "arbitrary and capricious act."

Response: See response to Comment F-33 (II).

Comment K-25 (II): Subsections 3836(a), (b), and (c) appear circular, grant arbitrary powers, and place a complete application at risk.

Response: Subsection 3836(a) language is patterned after that in the State Permit Streamlining Act (Government Code §65944). Concerning other criticisms, see response to Comment F-33 (II).

Comment K-26 (II): Subsections 3836(b), 3838(c) seem designed to avoid the mandatory one-year (federal) period for certification.

Response: See response to Comment F-33 (II).

Comment K-27 (II): Subsection 3859(a) should reference waiver of certification.

Response: See responses to Comments A-2 and G-13.

Comment K-28 (II): **The requirement for information on past and future projects in a watershed may be extremely difficult for an applicant with numerous projects to comply with.**

Response: See responses to Comments F-9, L-4, R-8, and S-19.

Comment K-29 (II): **Subsection 3861(d)(4) should also reference emergency storm damage repair.**

Response: Subsection 3861(d)(4) lists circumstances under which general certification should not be issued. Concerning certification of "emergency" activities, see responses to Comments G-1, R-46, R-54, and S-3.

Comment K-30 (II): **The (State Board) should certify emergency work for protection of the public's safety and the environment.**

Response: See responses to Comments G-1, R-46, R-54, and S-3.

Comment K-31 (II): **The new regulations appear to be trying to circumvent that law.**

Response: On the contrary, a key goal of this rulemaking process was to bring existing regulations into better compliance with State and federal laws. Staff believes that this goal will be achieved by the proposed language.

Note: **A copy of the Commenter's June 7, 1999 letter and attached comments is included. Response to those comments is included elsewhere in this record.**

COMMENTER O (II).

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Written Comments: January 13, 2000 Letter
2 pages
January 14, 2000 FAX
2 pages

Comment O-9 (II): **Several of this Commenter's previous comments have not been addressed in the latest proposed regulations.**

Response: See responses to Comments O-1 through O-8. All of the Commenter's recommendations were carefully considered, but not all were followed.

Comment O-10 (II): **Subsections 3856(c), (d), and (e) will require that very large amounts of written information be sent to the certifying agency. Could the applicant supply a list of potentially relevant documents, instead?**

Response: Depending on the project, this may be unavoidable. With regard to a list of documents, see response to Comment N-6.

Comment O-11 (II): **Please define under what circumstances a public hearing would be necessary (per §3858(b)).**

Response: Note the support for public hearing provided in Comment F-10 (but see also response to Comment L-5). Concerning what circumstances would prompt the need for a hearing, see response to Comment O-8.

COMMENTER P (II).

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Written Comments: January 14, 2000 Letter
8 pages
January 14, 2000 FAX
9 pages

Comment P-17 (II): **The definition of "water quality standards..." is still vague and should be limited to water quality requirements only.**

Response: See responses to Comments C-1 and D-7.

Comment P-18 (II): **There can be no additional benefit to notifying the U.S. Environmental Protection Agency of a complete certification application.**

Response: See response to Comment N-1.

Comment P-19 (II): **Section 3836 proposes denial without prejudice under certain circumstances. This scheme could be misused by the certifying agency against an otherwise blameless applicant. Consistent with federal law, once an application is complete, a certification action should be taken within 60 days.**

Response: See response to Comment F-33 (II). The Commenter's proposal would not work because not all federal agencies concede the State's ability to determine when a complete application has been received, or allow only 60 days to take a certification action (e.g., FERC allows one year). Regarding potential misuse, the proposed regulations establish a fair and programmatically consistent petition program that can be used to address grievances.

Comment P-20 (II): **The U.S. Environmental Protection Agency need not be notified of denial of certification.**

Response: See response to Comment N-1.

Comment P-21 (II): **Subsection 3838(c) should be revised to require a Regional Board to act on a certification application within 30 days or at the next scheduled meeting, whichever is earliest.**

Response: See response to Comment N-3.

Comment P-22 (II): **The requirement that a "final goal" be stated in the application should be removed.**

Response: See responses to Comments N-4, O-4, R-3, and R-31.

Comment P-23 (II): **Subsection 3856(d) could require that overly large amounts of written information be sent to the certifying agency. Subsection 3856(d)(3) should be removed.**

Response: See responses to Comments F-8, N-6, and O-5.

Comment P-24 (II): **The certifying agency's jurisdiction should not extend beyond waters of the United States. Subsection 3856(h)(7) should be corrected.**

Response: See response to Comment N-7. Clean Water Act section 401 (33 USC §1341(d)) clearly allows states to consider pertinent state laws (e.g., California Water Code) when issuing certification.

Comment P-25 (II): **The requirements of subsection 3856(h)(8) (list of prior and future projects on a watershed) are unnecessary, potentially harmful to applicants, and should be eliminated.**

Response: See responses to Comments F-9, L-4, R-3, and S-19.

Comment P-26 (II): **Under the section (§3858) on public notices, who is the certifying agency required to inform?**

Response: The Clean Water Act requires that states establish a procedure for public notice, but is silent as to the details. This section is intended to meet that public notice requirement.

Comment P-27 (II): **If the project is proceeding under a Nationwide Permit (NWP), the public notice requirement runs counter to the streamlining intended for that (NWP) program.**

Response: See response to Comment N-9 (and also response to Comment R-11).

Comment P-28 (II): **Is the language in subsection 3831(c)(3) intended to refer to a federal agency proposing a general license or permit?**

Response: See response to Comment N-10.

Comment P-29 (II): **The Commenter objects to the word "appropriate" when describing requirements associated with water quality standards.**

Response: See responses to Comments C-1 and D-7. Concerning the use of the word "appropriate," please see Comment F-32.

Comment P-30 (II): **Questions about the general certification process:**

1. **Will 45 days be adequate to properly notify all those to be impacted?**

2. **How will public comments be responded to?**

3. **What kind of public review will general certifications undergo prior to adoption?**

4. **Will CEQA compliance for general certification be satisfied by a programmatic environmental document?**

5. **Who will pay for preparation of such a (programmatic) CEQA document?**

6. **Will each general certification include a programmatic incidental take permit, or will project proponents be required individually to meet California Endangered Species Act requirements?**

Response:

1. For purposes of actually taking a general certification action, a 45-day public notice period (over twice that normally required) is adequate. However, for those activities that are not exempt, CEQA may require additional public notice.

2. For certification, the agency should consider public comments regarding general certification before taking an action. If it applies, CEQA, of course, requires its own public notification/comment process. A Lead Agency must consider public comments during the environmental review process.

3. No additional public review procedure, beyond that for individual certifications, is proposed in the regulations.

This is because general certification, as conditioned in section 3861 and subject to CEQA, (a) should not unduly impact water quality and environmental resources, (b) may require added public review under CEQA, and (c) can also rely if necessary on the certification program petition process.

4. As the Commenter appears to understand, the CEQA process can and should be a tiered process within a jurisdiction (e.g., county or city). General or programmatic environmental documents proceed plan area documents and, lastly, project specific documentation.

   Experience shows that general, programmatic CEQA documents prepared by other agencies frequently lack the specificity necessary for water quality agencies to make findings before issuing certification for individual projects. This can, for example, prevent timely certification of activities under a federal general permit.

   However, if an agency were to issue general certification on its own motion, it would normally become Lead Agency and responsible for environmental documentation. Although it might be difficult to specifically foresee all future, individual activities to proceed under general certification, the agency would still be required to anticipate all potential significant individual and cumulative impacts from those likely activities. Such impacts would have to be removed, alleviated, or otherwise mitigated for (i.e., via certification limitations/conditions) before approval could be granted. Furthermore, under certain circumstances, individual projects proceeding under the blanket of general certification (and its CEQA documentation) might still be required to develop supplemental or individual project specific environmental documentation before implementation.

   In short, yes--general/programmatic documentation could be relied on without discussing specific individual projects, but only if it reasonably addressed likely significant environmental impacts from all such projects.

5. Section 3861 is intended to address circumstances when a certifying agency intends to issue certification for a class

of activities on its own motion. In many, or perhaps most, cases the certifying agency will be the Lead CEQA Agency for this action, and also financially responsible for CEQA documentation.

6. Subsection 3861(d)(3) would prohibit general certification for any class of activities if federal or State listed species would, as a result, be impacted. Therefore, no programmatic incidental take permit should be required. However, should circumstances change after general certification (e.g., discovery of a previously unknown population of a listed species at a project site), individual project proponents might be required to satisfy State or federal endangered species requirements. (Or, if circumstances warranted, such new information could prompt the State to request that the federal agency modify or terminate a license/permit relying on the general certification.)

Comment P-31 (II): **"Aggrieved person" should be (more narrowly) defined.**

Response: See responses to Comments C-6 and C-7. (See also response to Comment L-2.)

Comment P-32 (II): **Subsection 3867(b) should be deleted as contrary to the intended delegation of certification to the Regional Boards.**

Response: See responses to Comments F-13 and F-41 (II).

Comment P-33 (II): **Section 3868 is problematic and should be deleted.**

Response: See response to Comment N-11.

Comment P-34 (II): **If not deleted, section 3868 should be revised so that (a) an insufficient petition can be amended only once and (b) amended petitions must be filed within ten days of the petitioner receiving the notice of deficiency.**

Response: See response to Comment N-11.

Comment P-35 (II): **A public hearing on a petition is unnecessary and should not be allowed.**

Response: See response to Comment P-16.

Comment P-36 (II): **"Aggrieved person" should be (more narrowly) defined.**

Response: See responses to Comments C-6 and C-7. (See also response to Comment L-2.)

Comment P-37 (II): **The petition for stay procedure is unnecessary under the (a) State certification, (b) federal license/permit, and (c) National Environmental Policy Act/CEQA processes.**

Response: See response to Comment F-43 (II).

Comment P-38 (II): **Furthermore, authority for the petition for stay procedure is not granted in law.**

Response: Staff must disagree. The California Legislature (i.e., in California Water Code §13321) clearly intended that the State Board be granted the ability to issue a stay related to a petition for reconsideration of waste discharge requirements, permits that may be and have been used interchangeably with water quality certification to regulate discharges of dredge/fill material. Staff takes the position that a stay procedure for the certification program petition process is both programmatically consistent and legally appropriate.

Comment P-38 (II): **If the petition for stay procedure remains, a five-day time frame to allow a petition for stay should be specified.**

Response: There is no statutory basis for limiting the stay period to only five days. The proposed language establishes a stay provision consistent with that already in place and used successfully for the associated waste discharge requirements regulatory program.

COMMENTER V (II).

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Written Comments: January 14, 2000 Letter
1 page
January 14, 2000 FAX
2 pages

Comment V-1 (II): The Public Works Agency did not receive the first draft regulations in April. The Commenter asks that these latest comments be considered.

Response: At the State Board's request, the Office of Administrative Law published a notice of this intended rulemaking on April 23, 1999. In addition, the State Board sent out its own notice for the June 8, 1999 public hearing on this issue using close to ten thousand listings of public and private agencies, groups, and individuals from twelve distinct data base mailing lists maintained by the State Board. Furthermore, the State Board published notices of the planned June 8, 1999 public hearing and information about the proposed rulemaking in four major California newspapers (San Francisco Chronicle, Los Angeles Times, Riverside Press-Enterprise, Sacramento Bee) on May 3, 1999. Lastly, the proposed regulations were noticed and available on the State Board's web site (well beyond public comment periods). In short, every reasonable effort was made to inform the general public of this intended rulemaking.

Comment V-2 (II): Channel, bridge, and culvert maintenance and repair activities should be exempt from requirements that applicants list past and future projects that will impact a watershed.

Response: See responses to Comments G-5, J-1, J-2, and T-2.